

Service Date: December 21, 1989

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Application	)	TRANSPORTATION DIVISION
of Burlington Northern Railroad	)	
Company to discontinue its agency	)	DOCKET NO. T-9264
and dispose of the depot facility	)	
at Culbertson/Bainville, Montana.	)	ORDER NO. 5929a

\* \* \* \* \*

FINAL ORDER

\* \* \* \* \*

APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Murphy, Robinson, Heckathorn & Phillips, P.O. Box 759, Kalispell,  
Montana 59903-0759

FOR THE CULBERTSON CHAMBER OF COMMERCE:

Laura Christofferson, Gallagher, Archambeault & Knierim, 200 Highway 2 East, P.O. Box  
997, Wolf Point, Montana 59201

FOR THE COMMISSION:

Timothy R. Baker and Ivan C. Evilsizer, Staff Attorneys, 2701 Prospect Avenue, Helena,  
Montana 59620

BEFORE:

DANNY OBERG, Commissioner & Hearing Examiner

### BACKGROUND

Burlington Northern Railroad Company (BN) applied to the Montana Public Service Commission (Commission) on August 25, 1988 for authority to discontinue its agency and dispose of the depot facilities at Culbertson/Bainville, Montana (Culbertson).

The Commission noticed BN's application and a public hearing was held on November 16, 1988 at the Lion's Club in Culbertson, Montana.

On March 24, 1989 the Culbertson Chamber of Commerce filed a Petition for rehearing with the Commission.

Following the filing and consideration of briefs by the parties, the Commission granted the Petition for rehearing on April 6, 1989. The Culbertson Chamber of Commerce was granted intervenor status as a party in this proceeding.

The rehearing was duly noticed, and held on June 13, 1989 at the City Hall in Culbertson, Montana.

Following the rehearing the parties stipulated in writing to a final order.

### SUMMARY OF TESTIMONY

#### Testimony of Applicant

Testifying for BN at the hearing on November 16, 1988 were Charles Scheibe, Les Schefilbine, James Whitmeyer and William Allbright.

Charles Scheibe. Mr. Scheibe is the Manager of Data Quality located in St. Paul, Minnesota. He explained that under BN's proposal, a shipper wanting service out of Culbertson would contact the Centralized Billing Center (CBC) in Great Falls to order a railroad car. The customer would provide the CBC with the necessary relevant information, such as commodity, destination and shipping date. The CBC places an order with a BN car distributor, who sends a car to the customer's loading facility. BN will pick up the car when it is loaded.

The CBC operates 24 hours a day, 7 days a week. It is a computerized operation that ties into the entire BN system. The customer prepares the bill of lading, and can call the CBC toll-free. There are three options for processing the bill of lading. The customer can mail the bill of lading to Great Falls for processing, may use a power of attorney for BN to sign the bill of lading, or may put the bill of lading into a locked box at the point of pickup. The CBC is equipped to handle both the bill of ladings and way bills (a way bill is an internal document that describes the destination of the car).

James Whitmeyer. Mr. Whitmeyer is the Division Agent at the CBC facility located in Great Falls, Montana. Mr. Whitmeyer testified that there are eight clerks assigned to Great Falls. There are four clerks assigned to the day shift, three on the evening shift, and one on the night shift. Mr. Whitmeyer also testified that he had conducted shipper meetings in the Culbertson area to inform shippers of the CBC use as well as answer any questions they may have. He stated that the shippers which were contacted did not oppose the application.

The agent is a protected employee with seniority, who would be able to bump a junior employee within the terms of his agreement with BN.

Les Schefilbine. Mr. Schefilbine is the trainmaster stationed in Glasgow. He testified that train service on the Opheim branch is a scheduled local on Tuesday as far as Scobey, returning on Wednesday. Train service to Opheim, or any point west of Scobey, is on an "as needed" basis. Mr. Schefilbine testified that the branch line is 150 miles in length, from Bainville to Opheim, with an operating speed of 35 mph to Scobey and some slow order track beyond to Opheim.

William Allbright. Mr. Allbright, a senior cost analyst for BN, sponsored Exhibit B -- Accounting Exhibits for Proposal to Discontinue Agency Service at Culbertson, Montana. Exhibit

B (updated at the rehearing) shows the following cars received and forwarded at Culbertson/Bainville (and the McCabe siding) in 1986, 1987, 1988 and the first three months of 1989.

Cars Received and Forwarded at Culbertson/Bainville

	1986	1987	1988	Jan-Mar 1989
Received	84	21	57	16
Forwarded	303	532	249	82
Total	387	553	306	98

Exhibit B also contained net revenues or losses for the Culbertson agency calculated using the Belt/Carter and the BN formulas.

	Belt/Carter Formula	BN Formula
1986	\$ 88,315	\$ 8,326
1987	153,163	43,298
1988	92,957	7,211
Jan-Mar 1989	31,194	6,055

Page 3 of Exhibit B shows the number of units handled and the estimated amount of time consumed performing agency work at the station at Culbertson during 1987. This schedule shows a total time worked of 2,000 hours and a total time required for agency work of 365 hours, including travel time. Based on BN's estimation of the time required to do a unit of agency work, and the actual number of units of work handled, the agent at Culbertson spent 19 percent of his time on agency work and 81 percent of his time was available for other work.

Testimony of Public Witnesses

Mr. James Mular, legislative director of the Transportation Communications Union (TCU) testified in opposition to the closure of the Culbertson agency. He testified that he believes that public convenience and necessity require the Culbertson agency to remain open. Using the Belt/Carter formula, the agency is profitable. In his opinion, the lack of shipper testimony does not prove that public convenience and necessity do not require the Culbertson agency. The railroad has introduced no evidence to show that the Great Falls agency is capable of handling the increased work from Culbertson, and has produced no evidence that the Great Falls CBC can adequately meet shipper needs.

Mr. Mular also testified that there will be no cost-savings to the railroad for closing the Culbertson agency, because the agent is a protected employee. He also disputed BN's productivity figures arguing that the numbers do not adequately reflect the agent's contribution to service.

Mr. Mular requested the Commission to give employee wage protection under ♣69-14-1001, MCA. He also testified as to his discussions with BN personnel during the 1987 legislature regarding the amendment of ♣ 69-14-202, MCA, and its subsequent application. Mr. Mular testified that BN indicated it would not seek the closure of any station where the agent was within two years of retirement. This policy would avoid both the bumping of junior employees and the upheaval of the agent's life. Mr. Mular testified that in return for this promise the TCU and other unions did not oppose the amendment of ♣69-14-202, MCA.

Mr. Allen Peterson, Culbertson, Montana, appeared and testified. Mr. Peterson is the president of the Culbertson Chamber of Commerce, and has resided in the Culbertson area since 1938. He is not a shipper. Mr. Peterson testified that the local agent performs many important functions, including roll-by inspections and assisting with right-of-way fires. If BN's application is granted, there will be a large area between Williston, North Dakota and Wolf Point, Montana, with no agent on the main line. Traffic along the northern route has increased.

Public testimony at the rehearing on June 13, 1989 was given by Gene Vannatta, Laurence Schledewitz, Larry Mahlum, Mike Hanson, Alfred Heupel, Gerald Schlagel, Wilfred Casterline, Laverne Schledewitz, Senator Larry Tveit, Don Steppler, Linda Nelson, Jim Mular, John Beck, Lucille Olson, Carston Beck, Jim Witmyer, Isadore Conaway, Gary Allen and Roy Lemieux.

Mr. Gene Vannatta of Culbertson, Montana, the owner-manager of the John Deere dealership in Culbertson, appeared and testified in opposition to the application. Mr. Vannatta is also President of the Culbertson Chamber of Commerce. He stated that he uses BN as a shipper of farm machinery. He opposes the closing of the agency on the basis of: 1) The economic impact on the community, 2) Safety (fire danger) and 3) Convenience. Mr. Vannatta emphasized the personal service provided by the local agent. He gave an example of goods damaged in transit and the advantages of having a local agent available.

During cross-examination, Mr. Vannatta added that the local agent is available to advise or assist if problems are encountered in unloading equipment, or if a rail car needs to be moved to facilitate unloading. The local agent has also personally contacted him when a rail car containing his merchandise has been spotted.

Mr. Vannatta also stated that two BN employees contacted him prior to the November hearing. After their meeting, Mr. Vannatta had the impression that the decision to close the station had already been made. However, the BN employees did not lie to him and did not tell him not to show up at the hearing.

Mr. Laurence Schledewitz, manager of Custom Built Feeds in Culbertson and also a member of the Chamber, testified in opposition to the application, and in support of retaining the local agent. Custom Built Feeds is looking into the possibility of a transloading facility to utilize the services of BN more extensively. He would like a siding for Custom Built, but cannot justify the cost on economic grounds. He also feels that the agency is important to local business, and cited an example of the local agent assisting a local business in securing a job cleaning up derailed cars. He also cited the importance of the personal local service of the agent. He stated that the local agent is not being utilized as much now only because the Company took away almost all of his responsibilities.

Mr. Schledewitz stated that discussions with the local agent prior to the November hearing gave him the feeling that it would not do any good to go to the hearing, and the closure was simply a matter of completing paperwork. He affirmed the statements contained in his affidavit filed with the Commission that nothing could be done to change BN's decision to close the agency and that the local agent discouraged him from attending the first hearing.

On cross-examination, Mr. Schledewitz stated that he does not know the toll-free 800 number for the BN Great Falls office, and has never called it. He likes the local personal service provided by the local agent. He also sees a safety function for the local agent, for example, if he saw a loose load on a rail car, he would call the local agent, not the toll-free number.

Mr. Schledewitz further stated that Custom Built Feeds has utilized BN's services for the past few years for the transportation of "sacked" material, and has utilized about two BN cars during the past year.

Mr. Larry Mahlum, manager of Elder Oil Seed Co. in Culbertson testified in opposition to the application. Elder is the largest BN shipper in Culbertson, and uses a total of about 450-500 cars per year for inbound and outbound freight. He feels that the local agent is very helpful. He estimates that he is productive approximately 40 percent of the time. He stated that the local agent assists with "caps" (or "seals") for oil cars - the aluminum clip which verifies that a car has not been tampered with. The local agent retrieves caps which have fallen off cars, and insures that there are a sufficient number of caps available for use. The local agent also assists in repairs on sidings, and requests for a particular type of car.

Mr. Mahlum was very concerned that another job may be lost in Culbertson. He also stated that he was generally satisfied with the service provided by the toll-free number (he uses it everyday).

Mr. Mike Hanson, National Guard Technician and Fire Chief of the Culbertson Volunteer Fire Department, also testified in opposition to the application. He stated it is important to have a local agent available in the case of a fire, hazardous material accident or other disaster, especially to assist in the coordination of disaster teams. He cited the assistance provided by the local agent during the accident near Culbertson involving Amtrak and a propane truck. In addition, the local agent advises the Fire Department whenever BN is using a "grinder," due to the high fire danger. He emphasized the importance of the local agent in the case of right of way fires, and noted



that about 90 percent of the fires in the area are on the right of way. On cross-examination, however, he could not precisely identify the source of the 90 percent figure.

Mr. Alfred Heupel, manager of Farmers Elevator testified in opposition to the application. He stated that the Elevator ships grain with BN - approximately 10-20 cars per year. He feels that he receives better car spotting service from the local agent, especially at night. He does not agree that the local agent's position is unproductive. He uses the toll-free number, but feels that the service provided by the local agent is more efficient and of higher quality. The local agent has always fulfilled his requests.

Mr. Heupel further stated that he was contacted by BN employees prior to the November hearing, and understood from their meeting that the decision to close the depot was irreversible and attendance at the hearing would be useless.

Mr. Heupel stated that on occasion the local agent has more accurate information than the computer in Great Falls (accessed through the toll-free number). On one occasion, he ordered one car to arrive each day for four consecutive days, but all four arrived on the same day. As a result, he was assessed a demurrage charge of \$60.

Mr. Gerald Schlager is a member of the Chamber and operates Culbertson Supply, which provides fertilizer, chemicals and other agricultural supplies. He uses about 6-12 BN cars per year. He relies on the local agent to spot cars correctly. The toll-free number does not provide satisfactory service when the computer is down. The local agent also spotted some equipment that was loose on a rail car one night. He feels that the local agent is a productive employee.

Mr. Schlager also testified that the local agent assisted him in clearing up a demurrage bill he received for six cars which were improperly delivered to his plant. The toll-free

number failed to provide satisfactory service on that occasion. The local agent had a record of the location of the cars, which helped clear up the dispute. But, other than this problem, and failing to spot cars when the computer is down, the toll-free number has provided Mr. Schlagel with satisfactory service.

Mr. Wilfred Casterline, President of C D & F Development Corporation and a Culbertson area farmer testified in opposition to the application. He stated that on occasion (although not in the past three years) his farm machinery has become stuck on railroad crossings, and the local agent has been helpful. Specifically, the local agent always recognizes his voice (when he calls) and he does not have to explain the crossing location in great detail.

The foregoing summarizes the testimony presented by the Culbertson Chamber of Commerce. The following represents a summary of the public witnesses, which also offered testimony at the hearing.

Ms. Laverne Schledewitz, Roosevelt County Commissioner, testified that transportation service is vital to the Culbertson area, and that the community does not want the agency to close.

Senator Larry Tveit, state senator and farmer-rancher, testified in support of the local agent, although he is not directly a shipper. He said that the incidence of cargo coming loose and falling off presents a safety concern for small towns. Cabooses are also needed for safety reasons. The local agent in Culbertson only became unproductive because BN took away all of his responsibilities. It is common for service to deteriorate as it becomes more impersonal. He also explained the legislative history of HB 626.

Mr. Don Stepler, state representative, testified to the importance of the Culbertson station for the local economy and international trade. Some local businesses have the potential to become major shippers, but without a local agent, the business will likely shift to Wolf Point or Williston. He expressed a concern over the increase in centralization by BN, and the possibility that even the Great Falls office could be closed in the future, requiring shippers to contact offices as far away as Spokane or Minnesota.

Ms. Linda Nelson, state representative, also testified in opposition to the application. She stated that if the Culbertson station is closed, there will be no BN agent between Williston and the Sheridan/Daniels area.

Mr. Jim Mular appeared and testified in opposition to the application. He added to the testimony he provided at the November hearing by stating that the local agent provides low frequency radio communication with the train crews from five to fifteen miles each direction. This would obviously be useful in the case of a right-of-way fire, or other emergency. He noted, though, that some radio fade-outs occur on the Opheim branch line. The local agent also provides personal local contact with the local shippers. He repeated that the evidence at the first hearing proved that Culbertson is a profitable station for the railroad. The local agent is productive both for the community as a whole and for the shippers. BN took away the local agent's responsibility for Bills of Lading and Demurrage records. In response to some previous testimony, he added that computer foul-ups and outages occur frequently. Furthermore, BN owes a duty to the local community. He referred to the "Agency Manual," incorporated into the record at the first hearing, which states that the local agent is the last line of communication with a community. He then referred to the legislative history of HB 626. Although established accounts are handled by computer, single car

shipments are not. Lastly, if the application is granted, he requested that the local agent be given protection pursuant to < 69-14-101, MCA.

Mr. John Beck, Ms. Lucille Olson and Mr. Carston Beck, all of Culbertson, Montana, also testified at the hearing.

### Rebuttal Testimony

BN then presented rebuttal testimony. Mr. Jim Whitmyer, BN Customer Service Manager in Great Falls, testified concerning demurrage and simultaneous delivery of cars, in response to Mr. Schlagel's problem. He said that, for efficiency reasons, it is a normal practice to simultaneously deliver a number of cars, but the computer does not begin to assess demurrage charges until the appropriate day. He also said the computer is down at various times, but the local agent cannot provide any information during those periods either. On cross-examination, however, he did state that the local agent may be able to assist in tracing a car when the computer is down.

Mr. Isadore Conaway, BN Data Quality Manager, testified concerning his contacts with Culbertson shippers on May 11, 1988, accompanied by Mr. Gary Allen. First, they contacted the local agent, Mr. Roy Lemieux, to inform him of BN's intent to file the instant application with the PSC, and to obtain a list of shippers in the area. Mr. Conaway's recollection concerning the meetings with the Culbertson shippers was vague, but he denied stating that it was useless to protest the closure or that he actively discouraged attendance at the hearing.

Mr. Gary Allen, BN Terminal Manager in Havre, also testified concerning the Culbertson shipper visits. He said he did not discourage attendance at the November hearing and

did not say that it would be useless to protest the closure. He further stated that the purpose of the visit was to inform shippers of the Company's intention to apply for closure, and to inquire as to whether closure would pose any particular problems. He could not recall any particular objections being expressed during the contacts, but he does recall general comments indicating a preference for the personal contact provided by the local agent.

Mr. Roy Lemieux, BN Local Agent in Culbertson, testified last. He denied stating that the decision to close the agency had already been made or that BN only had to complete certain paperwork. He also said that he did not discourage attendance at the November hearing.

Mr. Lemieux stated that for all practical purposes, he no longer has any work to do in his present position. He did admit that he provides seals for Mr. Mahlum. With respect to one of the fires caused by Amtrak, he stated that by the time he called the Fire Department, the fire trucks had already left.

#### DISCUSSION, ANALYSIS AND FINDINGS

Under ♣69-14-202(2), MCA, as amended by the 1987 legislature, the Commission shall authorize the closure, consolidation or centralization of a facility if a railroad demonstrates to the Commission that the facility is not required for public convenience and necessity. Public convenience and necessity is not an absolute standard that can be determined by formula. It must be determined by the facts and circumstances of each case. The Commission must weigh the needs of shippers for rail service and the concerns of the communities served by the railroad against the railroad company's burden of maintaining agency service.

The 1989 Legislature modified ♣ 69-14-202(2), MCA, by adding the following language:

In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

Since the legislature does not engage in idle acts, the Commission reads this amendment to < 69-14-202, MCA, to reflect the desire of the legislature that the Commission expand its analysis to include impacts of the proposed closure upon persons other than shippers. A review of the legislative history of this amendment supports such an interpretation. The amendment was effective on May 5, 1989, after the application was filed and the first hearing in this matter, but before the rehearing on June 13, 1989.

In this instance the Commission encountered strong resistance to BN's proposal from both the general public and shippers that calls for analysis. Opposition to the closure that could be considered public testimony focused on two general arguments: 1) The closure would have an adverse economic effect on the community, and 2) Public safety and welfare issues. Although we are sympathetic to the concerns of rural communities about economic impacts of a closure in terms of lost wages and taxes to the town, such arguments clearly cannot justify imposing a financial burden on the railroad in the absence of other facts which would call for continued agency service. Testimony concerning public safety concerns such as fire danger, hazardous material incidents,

disasters and moving train caused hazards must be carefully considered. In reviewing the testimony, the Commission finds no specific physical plant or site conditions in Culbertson which would require the presence of an agent more than any other point on the railroad line. Furthermore, in rebuttal testimony BN testified they have developed technology to lessen community risk from train wrecks and has telephone numbers readily available to the public and police and fire personnel to assure a quick response to any accident.

The Commission has historically (and will continue to do so) placed great reliance on shipper needs to determine whether the PC&N does, in fact, justify local agency service. After careful consideration of the testimony from shippers, it is apparent that most of those concerns about service were mere preference of local over a distant agency. Services formerly provided by the local agent appear to be satisfactorily met with telephone contact as other alternatives.

However, the Commission need not determine in this proceeding which test should be applicable. Application of either test (pre-1989 legislature) demonstrates that public convenience and necessity does not require the agency at Culbertson to remain open.

The Commission finds that Culbertson received 84 shipments in 1986, 21 shipments in 1987, 57 shipments in 1988 and 16 shipments in 1989 (Jan.-Mar.). The agency forwarded 303 shipments in 1986, 532 shipments in 1987, 249 shipments in 1988 and 82 shipments in 1989 (Jan.-Mar.). No shippers or receivers of freight appeared to testify in opposition to the CBC concept. However, some did express a preference for the personal service provided by the local agent.

Based upon the volume of cars received or forwarded at Culbertson, "the lack of any unique track configurations causing spotting or traffic problems or other public hazard," BN's testimony that the Great Falls CBC is willing and able to provide all necessary services, and the other

testimony offered at the hearings in this matter, the Commission finds that public convenience and necessity does not require the Culbertson agency to remain open.

Although the record evidence in this docket supports a grant of BN's application, the Commission recognizes that agency service on the Opheim branch generally may be a valuable service to the local communities along that line. While maintenance of a full-time agent may not be required at many of the communities on the Opheim branch, BN is encouraged to explore other options for providing agency service along this line, such as shared agent service between many, or all of the affected communities.

#### CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.
3. No specific rule can be used to determine whether public convenience and necessity requires a given service to be performed. The facts in each case must be separately considered. See Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Board of Railroad Commissioners, 225 P.2d 346 (Mont. 1953), cert. den., 346 U.S. 823. The Commission concludes that the public convenience and necessity does not require the continuance of an agency at Culbertson, Montana.
4. The Commission concludes that Burlington Northern Railroad Company may remove the Culbertson depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if it is historically significant or allow local governments in the area the



opportunity to utilize the building. The Commission directs Burlington Northern Railroad Company to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application in Docket No. T-9264 to close the agency at Culbertson, Montana and dispose of the depot facilities is Granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall apply < 69-14-1001, MCA, as required.

IT IS FURTHER ORDERED that pursuant to stipulation that this is a final order.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are denied.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true and correct copy be mailed to the Applicant and all parties of record.

DONE AND DATED this 18th day of December, 1989 by a vote of

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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HOWARD L. ELLIS, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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WALLACE W. "WALLY" MERCER, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.